IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 432 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any OrdeJJ

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5. Whether it is to be circulated to the Civil Judge? : NO

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Rule. Service of rule is waived by learned advocate Shri D.N. Pandya appearing for the respondent. At the request of the learned advocates, the petition is finally heard and decided today.

2. The respondent was working as a Conductor under the petitioner Corporation. The case of the petitioner is that in 1991, when the respondent was in charge of a bus which was going from Nyaya Mandir to Vaghodiya, the respondent had not issued tickets to 10 passengers. In the circumstances, departmental proceedings had been initiated against the respondent and ultimately the respondent was dismissed from service.

3. Being aggrieved by the order of dismissal, the respondent had raised a dispute and ultimately the matter was referred to the Labour Court. The Labour Court, Baroda, in Ref. No. 123/97, was pleased to set aside the order of dismissal and directed reinstatement of the respondent with 50% backwages as the Labour Court came to the conclusion that the punishment of dismissal was very harsh.

4. Learned Advocate Shri K.S.Jhaveri appearing for the petitioner has submitted that looking to the facts of the case, the Labour Court ought not to have interfered with the order of dismissal especially in view of the fact that during the service career of the respondent, the respondent had committed misconduct on 40 different occasions. Looking to the negligence shown by the respondent during his entire career, it was just and proper to dismiss the respondent and the Labour Court ought not to have interfered with the said order of dismissal.

5. On the other hand, learned advocate Shri Pandya appearing for the respondent has submitted that the respondent had no intention to misappropriate money of the petitioner Corporation. Allegation against the respondent was that he had not issued tickets to 10 passengers. It is an admitted fact that the respondent had not taken fare from the said passengers. Only because the bus was overcrowded it was not possible for the respondent to issue tickets to 10 passengers and therefore the Labour Court was right in setting aside the order of dismissal.

6. I have heard the learned advocates. Upon perusal of the award it is very clear that the respondent had shown gross negligence in performance of his duties because he had not issued tickets to 10 passengers. It

is also clear that in the past the respondent was found negligent on several occasions. However, it appears that as the respondent had no dishonest intention, the Labour Court had rightly set aside the order of dismissal. It, however, appears that after setting aside the order of dismissal, no punishment has been imposed upon the respondent. In view of the said fact, the award passed by the Labour Court deserves modification. In my opinion, ends of justice would be served if the respondent is directed to be reinstated with 30% backwages and punishment of stoppage of one increment with future effect should be imposed upon the respondent. The award is modified accordingly.

7. It has been submitted by learned advocate Shri Pandya that the respondent could not be reinstated as he had already attained the age of superannuation. It has been submitted by him that he should be paid the retirement benefits and backwages as soon as possible. It is hoped that the amount payable to the respondent shall be paid by the petitioner as soon as possible and preferably within a period of 2 months from today.

Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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